

University of South Carolina School of Law Veterans Legal Clinic

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Agenda

- Introduction
- Need for Veterans Legal Clinic (VLC) in South Carolina
- Beginning of the VLC
- How it Operates
- Scope (areas covered)
- Assessment
- Where we are today
- Student Impact
- Conclusion

Introduction

- **Bennett Gore** – From Hartsville, South Carolina
 - Graduated from Wofford College
 - Commissioned as a Second Lieutenant in the U.S. Army
 - Graduated from University of South Carolina School of Law
 - Entered Active Duty in the U.S. Army JAG Corps
 - One year tour in Iraq – Camp Victory (Baghdad), Iraq
 - In 2014 - left Active Duty, Joined the South Carolina National Guard and began practice at Bluestein, Nichols, Thompson, Delgado.
 - Joined the faculty at the law school in February 2018 as the Clinical Instructor of the Veterans Legal Clinic.

Contact Information

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Need for the Veterans Legal Clinic

- The ABA has long recognized the need for law schools to create Veterans Legal Clinics to ensure Veterans, especially indigent ones, have unfettered access to legal services.
- Dean Wilcox and Dean Cherry recognized this need in South Carolina and laid the ground work to set-up our Veterans Legal Clinic.
- Columbia, SC: Uniquely Situated – the law school, state capital, VA Regional Office, Fort Jackson, and Dorn VA Medical Center all in Columbia.

Need for the Veterans Legal Clinic

- In South Carolina:
 - 403,948 Veterans
 - 10.34% of the Adult Population (National: 6.60%)
 - 41,802 Female Veterans
 - 10.35% of the Veteran Population (National: 9.12%)
 - We have Veterans from every period of service (Peacetime, WWII, Korean War, Vietnam War, Gulf War I, and Gulf War II)

Need for the Veterans Legal Clinic

- Why a Clinic at a Law School?
 - Provides pro bono legal services to the Veterans who are vulnerable and their families, thus making our community and state a better place.
- Allows students to engage with real cases.
 - Teaches hands-on legal skills.
 - Inspires public interest law careers
 - They will actually be practicing under the South Carolina Student Practice Rule

Need for the Veterans Legal Clinic

- June of 2017: The VA released the results of its CHALNEG Survey, which looked at homeless Veterans' unmet legal needs.
- The study found:
 - Male Veterans Highest Unmet Needs include legal assistance for child support issues, legal assistance to prevent eviction and foreclosure, family and marital counseling, and others.
 - Female Veterans Highest Unmet Needs include credit counseling, legal assistance for child support issues, and legal assistance to prevent eviction and foreclosure.

Beginning of the VLC at the School of Law

- In May of 2017, Dean Wilcox sought funding for the Veterans Legal Clinic from the South Carolina Bar Foundation and the Boeing Company.
- Both entities pledged funding for the Veterans Legal Clinic and to allow the law school to do a needs assessment through the Nelson Mullins Riley & Scarborough Center on Professionalism.
- We plan to started clients in June 2018 and are now in our third full semester of course work.

How the VLC Operates

- We are a 12 month clinic.
- Students are enrolled for either the Fall or Spring Semester of the Course.
- During breaks between semesters the clinic maintains the cases and carries them forward.
- The hasadjunct instructors from the Columbia area that mentor and instruct a team of students during the class.
- Referrals will be from the Appleseed, the Attorney General's S.C. VALOR Program, the VA, and other places.

Scope of the Clinic

- We serve a wide range of legal needs for indigent Veterans from around the state.
- The legal issues that we address are those that are most likely to affect the Veteran's ability to obtain or retain employment and contribute to homelessness among this population.
- We provide free, direct legal assistance on:
 - Credit and related financial matters
 - Housing/homelessness issues
 - Family law issues
 - Government Benefits (limited)

Scope

- Housing Issues
 - 11% of the homeless adult population are veterans*
 - 20% of the male homeless population are veterans*
 - 50% of homeless veterans have serious mental illness*
 - 70% of homeless veterans have substance abuse problems*
 - *National Coalition for Homeless Veterans:
http://nchv.org/index.php/news/media/background_and_statistics/#facts
 - Eviction Rates in Columbia and North Charleston are some of the worst in the country (Columbia was eighth worst and North Charleston was the worst. **
 - ** April 12, 2018 Post and Courier Article:
https://www.postandcourier.com/news/eviction-rates-in-north-charleston-columbia-some-of-the-highest/article_bebe69e2-3cd3-11e8-b412-331e6a815e34.html
 - **The Eviction Lab at Princeton University: <https://evictionlab.org/>

Scope

- Credit and Related Financial Matters

- 2010 study revealed “more than 1.4 million veterans are living below the poverty line, and another 1.4 million veterans are living just above it—numbers that have likely not yet peaked given the tepid recovery from the Great Recession and the large number of service members expected to leave active duty in the near future.”

Broken Promises: The Need to Improve Economic Security for Veterans,
available at

http://www.jec.senate.gov/public/index.cfm?a=Files.Serve&File_id=628ca26b-7433-4fca-8f53-aa713eb3e756

Scope

- Family Law Issues
 - 2016 CHALENG Survey results found family law issues among the top 10 unmet needs among both male and female Veterans.
 - Logically, with the high rate of other issues that Veterans experience, it is no surprise that these issues would affect everyone in the home causing a plethora of family law issues.
 - Anecdotally, the majority of our cases are family law issues.

Scope

- Government Benefits
 - VA Disability Benefits for Compensation and Pension
 - In South Carolina only 98,772 of the 403,948 Veterans are receiving Disability Compensation. That is less than 25%.
 - Additionally, only 5,505 Veterans are receiving Pension from the VA.
 - When the Veteran is service connected for his disabilities there are a whole host of programs s/he is entitled to: health care, education benefits, home loan guarantees, vocational rehabilitation and employment services just to name a few.
 - These benefit can have a life changing impact on a Veteran and his or her family.

Assessment

The Veterans Legal Clinic has partnered with Professor Elizabeth Chambliss and the Nelson Mullins Riley & Scarborough Center on Professionalism to assess which legal services are most needed by Veterans and to measure our effectiveness of meeting those needs.

Where we are today:

Clinic Intake and Case Status:

Case status as of May 31, 2019	Number
Full Representation Cases	25
Closed Cases	2
Advice & Counsel Intakes	3
Intakes Referred to Lawyers 4 Vets	14
Intakes Referred to Other legal providers	12
Closed Intakes (Turndown)	36
Open Intakes	103
Total Intakes	195

Where we are today:

- Hours of Service Provided and estimated Legal Fees:

	Fall 2018	Spring 2019	Total
Student hours (10 students in the fall 2018 semester and 11 in the spring 2019 semester)	1,077.4	1,531.5	2,608.9
Clinic Director hours	195.0	200.0	395.0
Adjunct professor hours (5 adjunct professors)	165	150	315
Total hours	1,437.4	1,881.5	3,318.9
Legal fees	\$289,780	\$379,310	\$669,090

Case Summaries

Current Cases:

“Gary” is a disabled USMC veteran who is being treated for prostate cancer. The cancer is attributable to his time at Camp Lejeune, where he was exposed to contaminated water. After being denied by the VA, Gary did not know where to turn. He came to the Clinic after hearing about it on the radio and became the Clinic’s inaugural client. The Clinic is in the process of litigating his appeal with the VA.

Case Summaries

Current Cases:

“Jonathan” came to the Clinic after hearing about its opening on television. Jonathan is an Army veteran. His marriage had fallen apart at the beginning of 2018. His then-wife walked out and left him to care for the children and pay their joint bills while she openly spent time with her new boyfriend. Jonathan could not afford to hire an attorney based on his low-paying employment. As he stated, “When I heard about the clinic on TV that day, I knew it was God giving me a sign.” Jonathan met with the Clinical Director and was signed as one of the Clinic’s first clients. The Clinic filed a divorce action and negotiated a temporary order that gives Jonathan primary custody of his children and monthly child support, easing his financial burden. The Clinic currently is negotiating the final agreement with the defendant and her attorney, which we expect to be favorable for Jonathan and his children. In addition to this quantifiable benefit, the Clinic has given Jonathan peace of mind by “being in his corner” and fighting for him.

Case Summaries

Current Cases:

“Michael” is a Navy veteran, who is attending school on a limited income. He has been in a custody and child support battle with the mother of his 14-year-old son. He came to the Clinic seeking representation to help him gain custody of his son, due to the son’s failing grades, deteriorating mental health, and overall poor health. The Clinic took the case and, shortly afterwards, the mother was arrested on serious criminal charges in Georgetown County, SC. Thanks to the dedication and zeal of its students, the Clinic was able to file for an emergency hearing to grant custody of the son to Michael. The hearing was set on very short notice. In one of the proudest moments of the Clinic, the student who worked on the case was able to successfully litigate the motion for temporary custody. The judge ruled that Michael was to have temporary custody and receive child support from the mother. The child’s grades improved, and he is visibly happier.

Case Summaries

Current Cases:

“James” is a disabled Army veteran, who came to the Clinic in great need due to issues with his landlord. His landlord raised the rent but would not fix the dilapidated conditions of his apartment, and initiated eviction proceedings in October 2018. The Clinic, again through the hard work of its students, litigated the eviction in magistrate’s court on James’ behalf. As a result, James was given an extension until December 4, 2018 to move out or pay his past-due rent; and the court ordered the past-due rent reduced from \$4,613.80 to \$3,216.00, a reduction of over thirty percent.

Case Summaries

Current Cases:

“Randy” came into the clinic after being served with foreclosure documents for not paying Homeowners Association dues for his home. He has three school-aged children. Randy proved to be a great client to teach students about the practice of law. On the best days, he was a difficult client. But eventually he proved so stubborn that he risked losing his home and causing himself and his family to be homeless. It came to the point where we sat him down and told him that, if he did not follow our legal advice, the Clinic was not going to continue to represent him. The meeting was effective: he took our advice to negotiate a payment plan with the Homeowners Association, to avoid foreclosure. This case shows that sometimes the biggest benefit of legal representation is preventing clients from making matters worse for themselves and their families. While this outcome is difficult to quantify, the avoidance of foreclosure has quantifiable benefits to the client, his family, and the community.

Student Impact

- **Student Survey:**
 - Pre-course and Post-Course survey
- After taking the class we have found students:
 - have in increase interest in working with students,
 - increased intent to work with Veterans after law school,
 - and, have a long-term commitment to working with Veterans during their legal career.

Student Impact

Student Comments about the class:

- “You taught us about perseverance and showed me the value of treating everyone with the upmost respect. These are lifelong lessons that I will forever hold dear to my heart. I am extremely grateful for the Veterans Clinic and the opportunity to be a small part of it.”
- “I wanted to say thank you so much for a semester I will never forget. You were the biggest inspiration to me at the law school and taught me more than I could ever learn inside a class room.”
- “It was definitely the most useful during my time at USC Law.”
- “I feel that, as a result of the clinic, I am now better prepared to deal with real client relationships and take a case from start to finish. I learned a lot of things that we were not taught in the traditional law school courses.”

Criminal Charges Impact on Benefits

- Generally there are three types of “military benefits” referred to by civilians and in civilian situations.
- They are:
 - Military Retirement
 - VA Compensation
 - VA Pension

All are distinct. More often than not, the terms are used interchangeably. They should not be.

Criminal Charges Impact on Benefits

- **Military Retirement:**

- Actual Retirement Pay.
- To be eligible-
 - Active Duty or Reserve/National Guard for sufficient amount of time (usually 20 years)
 - Disabled while on duty and medically retired
 - Paid by the military (Department of Defense)

Generally speaking, being convicted of a crime will almost never jeopardize this benefit. There are rare exceptions: charges relating to criminal disloyalty to the U.S. → espionage, treason, etc.

Criminal Charges Impact on Benefits

VA Compensation: *tax free monetary benefit* paid to Veterans with disabilities that are the result of a disease or injury incurred or aggravated during active military service.

The amount of VA Compensation that may be paid to beneficiaries who are incarcerated more than sixty (60) days for a felony conviction is severely limited. See 38 U.S.C.S. § 5313(a)(1); 38 C.F.R. § 3.665(a).

Criminal Charges Impact on Benefits

- **VA Compensation (cont'd):**

If the Veteran's combined disability rating is 20% or more, the Veteran will only receive the amount payable at the 10% rate. If the Veteran is rated at the 10% rate, then the Veteran will only receive half the 10% rate.

Here is the analysis the VA uses to determine whether the beneficiary of VA benefits has been incarcerated for over 60 days for a felony:

- 1) The beneficiary must be incarcerated.
- 2) Incarceration must be in a federal, state, or local penal institution.
- 3) It must be in excess of 60 days.
- 4) It must be the result of a felony conviction.

Criminal Charges Impact on Benefits

- **VA Compensation (cont'd):**
- Felony: “any offense punishable by death or imprisonment for a term exceeding one year, unless specifically categorized as a misdemeanor under the law of the prosecuting jurisdiction.”
- According to VA General Counsel, a felony conviction resulting in a sentence of “community control with conditions” does not amount to incarceration under 38 U.S.C.S. § 5313(a). See VA Gen. Coun. Prec. 59-91 (June 24, 1991).

Criminal Charges Impact on Benefits

- VA Compensation (cont'd):
- In short, payments are not reduced for recipients participating in work release programs, residing in halfway houses (also known as "residential re-entry centers"), or under community control.
- Lastly, once a Veteran is released from prison, compensation payments may be reinstated based upon the severity of the service connected disability(ies) at that time. Veteran would have to affirmatively seek to "turn benefits back on."

Criminal Charges Impact on Benefits

- VA Compensation (cont'd):

Example: Vet is receiving 100% disability (approx. \$3300/month). Gets convicted and meets the above criteria. He will be dropped to the 10% rate, which is \$140.05 per month. If he is at 10%, he will be dropped to \$70.025 a month. So this can be significant drop in income.

But knowing how this happens can give the defense attorney some creative ways to help negotiate.

Criminal Charges Impact on Benefits

- **VA Pension:** Tax-free monetary benefit payable to low-income wartime Veterans. *It is different and distinct from VA Compensation.* Veterans in receipt of VA pension will have payments terminated effective the 61st day after imprisonment in a federal, state, or local penal institution for conviction of a *felony or misdemeanor.* Payments may be resumed upon release from prison if the Veteran meets VA eligibility requirements. Failure to notify VA of a Veteran's incarceration could result in the loss of all financial benefits until the overpayment is recovered. 38 C.F.R. § 3.66(g).

Questions



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School of Law

Thanks!

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